

ESTTA Tracking number: **ESTTA1129766**

Filing date: **04/27/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Saul Zaentz Company		
Entity	Corporation	Citizenship	Delaware
Address	2117D FOURTH STREET BERKELEY, CA 94710 UNITED STATES		
Attorney information	MICHAEL A. GROW ARENT FOX LLP 1717 K STREET, NW WASHINGTON, DC 20006-5344 UNITED STATES Primary Email: tmdocket@arentfox.com Secondary Email(s): michael.grow@arentfox.com , elizabeth.cohen@arentfox.com , laure.hadas-lebel@arentfox.com , teresa.myers@arentfox.com 2028576000		
Docket Number	031689.11790		

Applicant Information

Application No.	90212781	Publication date	03/30/2021
Opposition Filing Date	04/27/2021	Opposition Period Ends	04/29/2021
Applicant	Hu Congyan NO.1 XINGGAN ROAD SOUTH ROAD, ZHUANGKOU TOWN, HUICHANG COUNTY, GANZHOU, JIANGXI, 341000 CHINA		

Goods/Services Affected by Opposition

Class 025. First Use: 2020/07/31 First Use In Commerce: 2020/07/31

All goods and services in the class are opposed, namely: Coats; Gloves; Pants; Shoes; Socks; Underpants; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Hats; Ladies' underwear; Scarfs; Skirts; Sports vests; Sweatshirts; Tops as clothing; Vests

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SMEAGOL		
Goods/Services	A wide variety of goods, including clothing and other merchandise.		

Attachments	SZC v. HU CONGYAN - notice of opposition.pdf(453749 bytes)
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Signature	/Michael A. Grow/
Name	Michael A. Grow
Date	04/27/2021

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 90212781 for SMEAGOL

THE SAUL ZAENTZ COMPANY	:	
Opposer	:	
v.	:	Opp. No. _____
HU CONGYAN	:	
Applicant	:	

NOTICE OF OPPOSITION

The Saul Zaentz Company (“Opposer”), having an address of 2117D Fourth Street, Berkeley 94710, believes that it will be damaged by the registration of the above identified mark and hereby opposes registration of the mark for each of the classes listed in the application under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, it is alleged that:

1. Opposer holds all right, title and interest in and to all trademarks and service marks derived from the fictitious names of characters, places, events, and things mentioned in the highly popular books and movies sold under the marks THE LORD OF THE RINGS and THE HOBBIT (the “LOTR and HOBBIT Books and Movies”).
2. Opposer is a world renowned leader in the creation, production, distribution, and marketing of motion pictures, television programs, video games, other forms of audio visual entertainment, clothing, toys, and related merchandise.
3. Opposer also owns the worldwide film, stage and merchandising rights pertaining to the LOTR and HOBBIT Books.
4. Opposer and/or its related companies have produced the following motion pictures (the “LOTR and HOBBIT Movies”) based on the books:

- *The Lord of the Rings* (1978)
- *The Lord of the Rings: The Fellowship of the Ring* (2001)
- *The Lord of the Rings: The Two Towers* (2002)
- *The Lord of the Rings: The Return of the King* (2003)
- *The Hobbit: An Unexpected Journey* (2012),
- *The Hobbit: The Desolation of Smaug* (2013), and
- *The Hobbit: The Battle of the Five Armies* (2014).

5. Opposer has used, registered and/or applied for registration of numerous other marks derived from the LOTR Books and Movies (the “LOTR and HOBBIT Marks”) and Opposer has common law rights in these marks.

6. Opposer has established exclusive common law rights in SMEAGOL and other LOTR Marks because it was the first to use that mark in connection with the sale of goods or services.

7. The name “Smeagol” was coined by Tolkien to denote one of the key characters in the LOTR and HOBBIT Books, namely, a Hobbit who was corrupted and transformed by the power of “The One Ring” and who later became known as Gollum due to his habit of making a horrible swallowing noise in his throat.

8. In the LOTR and HOBBIT Movies, Smeagol is portrayed by the famous actor Andy Serkis shown below in his computer generated and natural characters.



9. Opposer's common law rights also have been developed through an extensive worldwide intellectual property licensing program under which many businesses have been licensed to use the LOTR and HOBBIT Marks and other marks derived from the books and movies in connection with a wide range of goods and services throughout the United States.

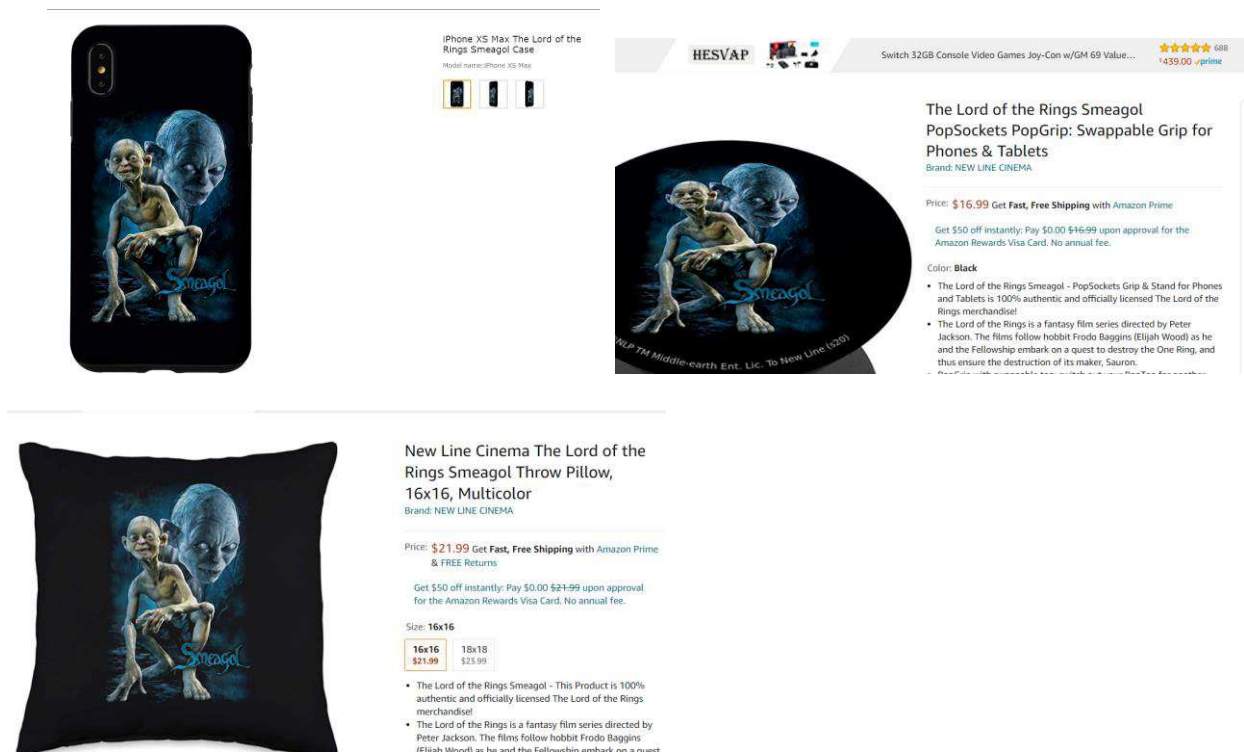
10. Like many other entertainment companies, Opposer also has developed a world-wide merchandising program pursuant to which it uses and licenses others to use numerous trademarks and service marks derived from its motion pictures and other audio visual works on a wide variety of goods and services, including clothing and other merchandise as shown below.





11. Consumers are well aware of the fact that motion picture companies sell merchandise under marks derived from their movies and many seek to buy such items because of their interest in such movies.

12. Some of these goods are sold under the mark SMEAGOL, examples of which are shown below.



13. Because of the fame and popularity of the LOTR and HOBBIT Books and Movies, Opposer's SMEAGOL mark has become indelibly linked with Opposer in the minds of consumers throughout the United States.

14. The LOTR Books have been in print continuously since their initial publication dates (*i.e.*, *The Hobbit* 1937, *Fellowship of the Rings* 1954, *The Two Towers* 1955, and *Return of the King* 1956).

15. Each book became enormously popular soon after publication and there have been approximately fifty (50) printings of the LOTR Books.

16. Since 1938, when Tolkien's book *The Hobbit* was published, more than 45 million copies of the Tolkien works have been sold in the United States alone and the books have been translated into more than thirty-five (35) languages.

17. The fame of Opposer's SMEAGOL mark has been enhanced by the fact that the LOTR movies have been viewed by many millions of individuals throughout the United States in movie theaters, on broadcast and cable television channels, thorough home videos, and video streaming.

18. Before the LOTR Movies were released, an estimated 100 million copies of the Tolkien books had been sold.

19. After the release of the LOTR Movies, another 50 million copies of the LOTR Books were sold bringing the total to 150 million copies sold.

20. In a 2008 Harris Poll, the LOTR Books were ranked as the second most favorite (behind only the Bible) among men, people residing in the Eastern United States, and college graduates; and the books were ranked third among all persons polled over eighteen years of age.

21. The LOTR Movies garnered seventeen Academy Awards altogether including a Best Picture award.

22. The three LOTR Movies and three HOBBIT movies are among the top grossing films of all times, and each series has generated approximately \$3 billion in worldwide box office receipts.

23. The HOBBIT and LOTR Movies have also been widely disseminated and viewed on DVDs and on network and cable television channels, in flight movie channels and online movie sites such as the NETFLIX and AMAZON PRIME streaming movie channels.

24. Long prior to any use date or priority date that Applicant may claim, Opposer and/or its predecessors in interest established common law rights in the SMEAGOL mark, directly and/or through related companies and licensees, which have sold merchandise bearing the mark.

25. Notwithstanding Opposer's prior rights in its Mark, Applicant applied to register SMEAGOL for "Coats; Gloves; Pants; Shoes; Socks; Underpants; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Hats; Ladies' underwear; Scarfs; Skirts; Sports vests; Sweatshirts; Tops as clothing; Vests," in Class 25.

26. Since long prior to the filing date of Applicant's application, Opposer has used the SMEAGOL mark and the mark is immediately identifiable as a designation that evokes images associated with the LOTR Books and the LOTR Movies as well as Opposer's products.

27. Upon information and belief, Applicant knew of the LOTR and HOBBIT Books and Movies, and of Opposer's rights in the LOTR and HOBBIT Marks, before applying to register SMEAGOL as a trademark.

LIKELIHOOD OF CONFUSION - §2(d)

28. The mark that Applicant seeks to register is identical to Opposer's Mark and the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's services and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark.

29. The goods of Applicant are so related to the goods and services sold under Opposer's Mark that the public is likely to be confused, to be deceived and to assume erroneously that Applicant's services are those of Opposer or that Applicant is in some way

connected with, licensed or sponsored by or affiliated with Opposer, all to Opposer's irreparable damage.

30. Likelihood of confusion is enhanced by the extraordinary fame of Opposer's Mark, and by the fact that consumers associate said mark with goods and services sold, approved or endorsed by Opposer; moreover, individuals that might purchase Applicant's goods are prospective purchasers of products or services sold under Opposer's Mark.

31. Likelihood of confusion is enhanced by the fact that Applicant's alleged mark SMEAGOL is identical to Opposer's SMEAGOL mark.

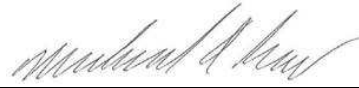
32. Likelihood of confusion is further enhanced by the fact that the goods in the application are closely related to Opposer's goods.

33. WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

April 27, 2021

THE SAUL ZAENTZ COMPANY

By: _____



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